

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

United States Court of Appeals for the Federal Circuit

05-3185

VANESSA R. HARDY,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

DECIDED: December 9, 2005

Before MAYER, RADER, and LINN, Circuit Judges.

PER CURIAM.

Vanessa R. Hardy (“Hardy”) appeals the final decision of the Merit Systems Protection Board, disallowing Hardy’s claim for disability retirement under the Federal Employees’ Retirement System (“FERS”), reversing the initial decision of the board, and affirming the June 16, 2003, reconsideration decision by the Office of Personnel Management (“OPM”). Hardy v. Office of Pers. Mgmt., AT844E030739-I-1 (MSPB Mar. 17, 2005). We affirm.

This court reviews final decisions of the board for “a substantial departure from important procedural rights, a misconstruction of the governing legislation, or some like error going to the heart of the administrative determination,” and cannot review the factual underpinnings of the decision. Anthony v. Office of Pers. Mgmt., 58 F.3d 620, 624-26 (Fed. Cir. 1995)(citations omitted). In making its decision, the board properly considered only that evidence pertaining to Hardy’s disability during the period of her employment when determining whether she was eligible for disability retirement. The disability she suffered in the year subsequent to her separation from federal service was only relevant in establishing her right to a waiver of the statutory filing deadline, which she was granted, and not entitlement to disability retirement itself. The board did not substantially depart from important procedural rights in considering Hardy’s disability retirement eligibility and in concluding that the evidence was insufficient to support an award of disability retirement.